

(c) ADDITIONAL REMEDIES.—A remedy under this part is in addition to any other remedies provided by law.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40120(a) .....	49 App.:1509(a).	Aug. 23, 1958, Pub. L. 85-726, §§1106, 1109(a), 1110, 72 Stat. 798, 799, 800.
40120(b) .....	49 App.:1510.	
40120(c) .....	49 App.:1506.	

In subsection (a), the words “International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.)” are substituted for “sections 143 to 147d of title 33” because those sections were repealed by section 3 of the Act of September 24, 1963 (Public Law 88-131, 77 Stat. 194), and replaced by 33:ch. 21. Chapter 21 was repealed by section 10 of the International Navigational Rules Act of 1977 (Public Law 95-75, 91 Stat. 311) and replaced by 33:1601-1608. The words “including any definition of ‘vessel’ or ‘vehicle’ found therein” and “be construed to” are omitted as surplus.

In subsection (b), before clause (1), the words “to the extent”, “of time”, and “any areas of land or water” are omitted as surplus. The words “and the overlying airspace thereof” are omitted as being included in “outside the United States”. In clause (1), the words “treaty, agreement or other lawful” and “necessary legal” are omitted as surplus.

Subsection (c) is substituted for 49 App.:1506 to eliminate unnecessary words and for clarity and consistency in the revised title and with other titles of the United States Code.

REFERENCES IN TEXT

The International Navigational Rules Act of 1977, referred to in subsec. (a), is Pub. L. 95-75, July 27, 1977, 91 Stat. 308, as amended, which is classified principally to chapter 30 (§1601 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 33 and Tables.

EX. ORD. NO. 10854. EXTENSION OF APPLICATION

Ex. Ord. No. 10854, Nov. 27, 1959, 24 F.R. 9565, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

The application of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C.A. §1301 et seq. [see 49 U.S.C. 40101 et seq.]), to the extent necessary to permit the Secretary of Transportation to accomplish the purposes and objectives of Titles III [former 49 U.S.C. 1341 et seq., see Disposition Table at beginning of this title] and XII [see 49 U.S.C. 40103(b)(3), 46307] thereof, is hereby extended to those areas of land or water outside the United States and the overlying airspace thereof over or in which the Federal Government of the United States, under international treaty, agreement or other lawful arrangement, has appropriate jurisdiction or control: *Provided*, That the Secretary of Transportation, prior to taking any action under the authority hereby conferred, shall first consult with the Secretary of State on matters affecting foreign relations, and with the Secretary of Defense on matters affecting national-defense interests, and shall not take any action which the Secretary of State determines to be in conflict with any international treaty or agreement to which the United States is a party, or to be inconsistent with the successful conduct of the foreign relations of the United States, or which the Secretary of Defense determines to be inconsistent with the requirements of national defense.

§ 40121. Air traffic control modernization reviews

(a) REQUIRED TERMINATIONS OF ACQUISITIONS.—The Administrator of the Federal Aviation Administration shall terminate any acquisition program initiated after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996 and funded under the Facilities and Equipment account that—

(1) is more than 50 percent over the cost goal established for the program;

(2) fails to achieve at least 50 percent of the performance goals established for the program; or

(3) is more than 50 percent behind schedule as determined in accordance with the schedule goal established for the program.

(b) AUTHORIZED TERMINATION OF ACQUISITION PROGRAMS.—The Administrator shall consider terminating, under the authority of subsection (a), any substantial acquisition program that—

(1) is more than 10 percent over the cost goal established for the program;

(2) fails to achieve at least 90 percent of the performance goals established for the program; or

(3) is more than 10 percent behind schedule as determined in accordance with the schedule goal established for the program.

(c) EXCEPTIONS AND REPORT.—

(1) CONTINUANCE OF PROGRAM, ETC.—Notwithstanding subsection (a), the Administrator may continue an acquisitions program required to be terminated under subsection (a) if the Administrator determines that termination would be inconsistent with the development or operation of the national air transportation system in a safe and efficient manner.

(2) DEPARTMENT OF DEFENSE.—The Department of Defense shall have the same exemptions from acquisition laws as are waived by the Administrator under section 40110(d)(2) of this title when engaged in joint actions to improve or replenish the national air traffic control system. The Administration may acquire real property, goods, and services through the Department of Defense, or other appropriate agencies, but is bound by the acquisition laws and regulations governing those cases.

(3) REPORT.—If the Administrator makes a determination under paragraph (1), the Administrator shall transmit a copy of the determination, together with a statement of the basis for the determination, to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(Added Pub. L. 104-264, title II, §252, Oct. 9, 1996, 110 Stat. 3236; amended Pub. L. 106-181, title III, §307(c)(2), Apr. 5, 2000, 114 Stat. 126.)

REFERENCES IN TEXT

The date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, referred to in subsec. (a), is the date of enactment of Pub. L. 104-264, which was approved Oct. 9, 1996.

## CODIFICATION

Another section 40121 was renumbered section 40124 of this title.

## AMENDMENTS

2000—Subsec. (c)(2). Pub. L. 106-181 substituted “section 40110(d)(2) of this title” for “section 348(b) of Public Law 104-50”.

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

## EFFECTIVE DATE

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104-264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

### § 40122. Federal Aviation Administration personnel management system

(a) IN GENERAL.—

(1) CONSULTATION AND NEGOTIATION.—In developing and making changes to the personnel management system initially implemented by the Administrator of the Federal Aviation Administration on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

(2) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator's proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to Congress. The 60-day period shall not include any period during which Congress has adjourned sine die.

(3) COST SAVINGS AND PRODUCTIVITY GOALS.—The Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units.

(4) ANNUAL BUDGET DISCUSSIONS.—The Administration and the exclusive bargaining representatives of the employees shall meet annually for the purpose of finding additional cost savings within the Administration's annual budget as it applies to each of the affected bargaining units and throughout the agency.

(b) EXPERT EVALUATION.—On the date that is 3 years after the personnel management system is

implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

(c) PAY RESTRICTION.—No officer or employee of the Administration may receive an annual rate of basic pay in excess of the annual rate of basic pay payable to the Administrator.

(d) ETHICS.—The Administration shall be subject to Executive Order No. 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.

(e) EMPLOYEE PROTECTIONS.—Until July 1, 1999, basic wages (including locality pay) and operational differential pay provided employees of the Administration shall not be involuntarily adversely affected by reason of the enactment of this section, except for unacceptable performance or by reason of a reduction in force or reorganization or by agreement between the Administration and the affected employees' exclusive bargaining representative.

(f) LABOR-MANAGEMENT AGREEMENTS.—Except as otherwise provided by this title, all labor-management agreements covering employees of the Administration that are in effect on the effective date of the Air Traffic Management System Performance Improvement Act of 1996 shall remain in effect until their normal expiration date, unless the Administrator and the exclusive bargaining representative agree to the contrary.

(g) PERSONNEL MANAGEMENT SYSTEM.—

(1) IN GENERAL.—In consultation with the employees of the Administration and such non-governmental experts in personnel management systems as he may employ, and notwithstanding the provisions of title 5 and other Federal personnel laws, the Administrator shall develop and implement, not later than January 1, 1996, a personnel management system for the Administration that addresses the unique demands on the agency's workforce. Such a new system shall, at a minimum, provide for greater flexibility in the hiring, training, compensation, and location of personnel.

(2) APPLICABILITY OF TITLE 5.—The provisions of title 5 shall not apply to the new personnel management system developed and implemented pursuant to paragraph (1), with the exception of—

(A) section 2302(b), relating to whistleblower protection, including the provisions for investigation and enforcement as provided in chapter 12 of title 5;

(B) sections 3308-3320, relating to veterans' preference;

(C) chapter 71, relating to labor-management relations;

(D) section 7204, relating to antidiscrimination;

(E) chapter 73, relating to suitability, security, and conduct;